

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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)
CENTER FOR BIOLOGICAL DIVERSITY)
351 California St., Suite 600)
San Francisco, CA 94104)
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Plaintiff,)
)
v.) Civ. No.-)
)
GINA McCARTHY)
in her Official Capacity as)
Administrator,)
United States Environmental Protection Agency)
Ariel Rios Building)
1200 Pennsylvania Avenue, N.W.)
Washington, DC 20460,)
)
Defendant.)
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiff the Center for Biological Diversity brings this Clean Air Act citizen suit to compel the United States Environmental Protection Agency to undertake overdue mandatory duties. Specifically, Defendant, Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (EPA), has failed to promulgate Federal Implementation Plans under 42 U.S.C. § 7410(c)(1)(A) for the following states for the following elements of the Infrastructure Statement Implementation Plans for the 2006 PM2.5 NAAQS:

STATE	ELEMENTS
Puerto Rico	Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M);
Iowa	Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M);
Washington	Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M)

Accordingly, Plaintiff THE CENTER FOR BIOLOGICAL DIVERSITY brings this action against Defendant GINA McCARTHY, in her official capacity as EPA Administrator, to compel her to perform her mandatory duties.

II. JURISDICTION

2. This is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act). An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 506 or 1146, and does not involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

III. NOTICE

3. On January 9, 2014, Plaintiff mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. More than sixty days have passed since Plaintiff mailed this “notice of intent to sue” letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists.

IV. VENUE

4. This civil action is brought against an officer of the United States acting in her official capacity. EPA is headquartered in this judicial district. Defendant Gina McCarthy officially resides in the District of Columbia. Accordingly, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

V. PARTIES

5. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) corporation incorporated in California. The Center for Biological Diversity has over 50,000 members throughout the United States and the world. The Center for Biological Diversity’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

6. The Center for Biological Diversity and its members include individuals with varying interests in wildlife species and their habitat ranging from scientific, professional, educational, recreational, aesthetic, moral, and spiritual. Further, the Center for Biological Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational, conservation, recreational, and aesthetic values of the regions inhabited by these species, including the regions at issue in this action. The Center for Biological Diversity's members observe and study native species and their habitat, and derive professional, scientific, educational, recreational, aesthetic, inspirational, and other benefits from these activities and have an interest in preserving the possibility of such activities in the future. The Center for Biological Diversity and its members have participated in efforts to protect and preserve natural areas, including the habitat essential to the continued survival of native species, and to address threats to the continued existence of these species, including the threats posed by air pollution and other contaminants.

7. Plaintiff's members live, work, recreate, travel and engage in other activities throughout the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiff's members as well as their ability to engage in and enjoy their other activities. Pollution diminishes Plaintiff's members' ability to enjoy the aesthetic qualities and recreational opportunities of the affected area.

8. The Clean Air Act violation alleged in this Complaint also deprive the Center for Biological Diversity and its members of certain procedural rights, including notice and opportunity to comment, associated with EPA's failure to promulgate Federal Implementation Plans. The Clean Air Act violation alleged in this Complaint also deprive the Center for

Biological Diversity and its members of certain information which they are entitled to under the Clean Air Act.

9. The Clean Air Act violations alleged in this Complaint have injured and will continue to injure the interests of Plaintiff's organization and its members, unless and until this Court grants the requested relief. Granting the relief requested in this lawsuit would address these injuries by compelling EPA action to perform its mandatory duties, thereby improving air quality and reducing the risk of exposure to air pollution and the uncertainty regarding that exposure.

10. The above injuries will continue until the Court grants the relief requested in this Complaint.

11. Defendant GINA MCCARTHY is the Administrator of the United States Environmental Protection Agency. In that role Administrator McCarthy has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

VI. LEGAL BACKGROUND

12. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again." H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air Quality Standards for certain pollutants. Each National Ambient Air Quality Standard must be stringent enough to protect public health and welfare. Effects on welfare include, but are not limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property, economic impacts and effects on personal

comfort and well-being. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of these pollutants, including particulate matter.

13. The Clean Air Act requires each state to submit a state implementation plan for every promulgation or revision of a National Ambient Air Quality Standard, within three years of that standard's promulgation or revision, that provides for the "implementation, maintenance, and enforcement" of the standard. 42 U.S.C. § 7410(a)(1). These are often referred to as "infrastructure" state implementation plans.

14. An infrastructure state implementation plan submittal must meet the requirements listed under 42 U.S.C. § 7410(a)(2). *See* 42 U.S.C. §§ 7410(a)(2)(A)-(M).

15. The Clean Air Act requires EPA to determine whether any state implementation plan submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B). If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete and EPA must make a determination stating that the state failed to submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a "finding of failure to submit."

16. If EPA finds that a state has failed to submit a SIP by a required deadline, EPA has a mandatory duty to promulgate a Federal Implementation Plan (FIP) within 2 years of that finding. 42 U.S.C. § 7410(c)(1).

VII. FACTS

17. In 2006, EPA promulgated a National Ambient Air Quality Standard for particulate matter. 71 Fed. Reg. 61,144 (Oct. 17, 2006).

18. States, as that term is used in the Clean Air Act which includes Puerto Rico, were required to submit Infrastructure SIPs addressing the 2006 PM_{2.5} NAAQS within 3 years, that is no later than October 17, 2009. 42 U.S.C. § 7410(a)(1). *See also* 76 Fed. Reg. 55,577, 55,578 (Sept. 8, 2011).

19. On September 8, 2011, EPA found that the following states had failed to submit the following elements of their 2006 PM_{2.5} Infrastructure SIP:

Puerto Rico failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M);

Iowa failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M);

Washington failed to submit for section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

76 Fed. Reg. at 55,579.

20. Since this finding, EPA has not yet approved any state implementation plan or revision from any of these states addressing these requirements.

21. Accordingly, EPA has a mandatory duty to promulgate a FIP addressing the requirements for the 2006 PM_{2.5} NAAQS for the above listed states by no later than October 11, 2013. EPA has failed to perform this mandatory duty.

VIII. CLAIM FOR RELIEF

CLAIM ONE

(Failure to promulgate Federal Implementation Plans)

22. Plaintiff incorporates by reference paragraphs 1 through 21.

23. Pursuant to 42 U.S.C. § 7410(c)(1), EPA has a mandatory duty to promulgate a FIP for 2006 PM_{2.5} infrastructure state implementation plans addressing for the following states for the following elements by no later than October 11, 2013: Puerto Rico Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M); Iowa Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M); and Washington Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

24. EPA has not promulgated FIPs and has not finally approved SIPs for Puerto Rico Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M); Iowa Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M); and Washington Section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

25. Therefore EPA has failed to perform the mandatory duties listed above.

IX. REQUEST FOR RELIEF

WHEREFORE, the Center for Biological Diversity respectfully requests that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform the mandatory duty listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duty by a certain date;
- C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- D. Grant the Center for Biological Diversity its reasonable costs of litigation, including attorneys' and expert witness fees; and
- E. Grant such further relief as the Court deems proper.

Respectfully submitted,

/s Robert Ukeiley

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